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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/070,541	03/07/2002	Geoffrey Michael McMeniman	181-119	5539
23117	7590	04/19/2005	EXAMINER	
NIXON & VANDERHYE, PC 1100 N GLEBE ROAD 8TH FLOOR ARLINGTON, VA 22201-4714			CHIANG, JACK	
			ART UNIT	PAPER NUMBER
			2642	

DATE MAILED: 04/19/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

## Office Action Summary

Application No.

10/070,541

Applicant(s)

MCMENIMAN, GEOFFREY  
MICHAEL

Examiner

Jack Chiang

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 16 November 2004.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 1-15 is/are pending in the application.
- 4a) Of the above claim(s) 2-6 and 8-15 is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1 and 7 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All b) ☐ Some \* c) ☐ None of:
1. ☒ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)  
Paper No(s)/Mail Date \_\_\_\_\_.
- 4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date. \_\_\_\_\_.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: \_\_\_\_\_.

### CLAIMS

1. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

2. Claim 1 is rejected under 35 U.S.C. 102(b) as being anticipated by Negley (US 3588384).

Regarding claim 1, Negley shows:

A holder (16 or 98);

A hands free mobile telephone accessory having an ear piece (24) and a microphone (22);

A flexible line (80) plugged into a telephone (col. 1, lines 7-8);

The holder (16 or 98) having an ear piece attachment means (EAM) (20 or 102) and a microphone attachment means (MAM) (18 or 100);

The arrangement being that the holder (16 or 98) can be held next to a persons head with the EAM being in or adjacent the persons ear, and the MAM being positioned to pick up speech.

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3. Claim 1 is rejected under 35 U.S.C. 102(b) as being anticipated by Chau (DE 19616867)).

Regarding claim 1, Chau shows:

A holder (space for holding 2);

A hands free mobile telephone accessory having an ear piece (5) and a microphone (6);

A flexible line (4) plugged into a telephone (1);

The holder having an ear piece attachment means (EAM) (for 5) and a microphone attachment means (MAM) (for 6);

The arrangement being that the holder can be held next to a persons head with the EAM being in or adjacent the persons ear, and the MAM being positioned to pick up speech.

4. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

5. Claim 7 is rejected under 35 U.S.C. 103(a) as being unpatentable over Negley in view of Diaz (FR 2601211).

Regarding claim 7, Negley shows a body (16 or 98) having one compartment (18 or 100) for holding the microphone (22), and holding means (20 or 102) for holding the ear piece (24).

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Negley differs from the claimed invention in that the body is not a rectangular body having two parts hinged together.

However, it is commonly seen that microphone and speaker are installed in a rectangular body which has two parts hinged together. This is taught by Diaz, such as the rectangular body (1, 2) having two parts (4, 5, or 10, 11) hinged together.

Hence, the concept of providing a body for holding the microphone and speaker is well taught by Negley, therefore, it would have been obvious for one of ordinary skill in the art to modify Negley's body with the type of Diaz's hinged body, such that when any parts of the internal components need to be replaced, the body can be hingely opened without separation such that to prevent any damage on the wiring of the device (see fig. 2 in Diaz).

### **RESTRICTION**

6. The restriction dated on 10-01-04 is made final. Claims 1 and 7 have been examined. Claims 2-6 and 8-15 have been withdrawn from further consideration.

7. Applicant's election of claims 1 and 7 in the reply filed on 11-16-04 is acknowledged. Because applicant did not distinctly and specifically point out the supposed errors in the restriction requirement, the election has been treated as an election without traverse (MPEP § 818.03(a)).


8. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Jack Chiang whose telephone number is 571-272-7483.

The examiner can normally be reached on Mon.-Fri. from 8:00 to 6:30.

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If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Ahmad Matar, can be reached on 571-272-7488. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

  
Jack Chiang  
Primary Examiner  
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